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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,533	08/30/2001	Kennith Smith	ALL.P.US0001	9420

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EXAMINER

MELWANI, DINESH

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/943,533

Applicant(s)

SMITH, KENNITH

Examiner

Dinesh N Melwani

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Acknowledgement is made of applicant's submission of:

Amendment A, which cancelled claims 1-11 and added claims 21-30,
filed on 12/30/02

The aforementioned item has been noted and officially inserted into the application.

Election/Restrictions

1. Applicant's election without traverse of a wrap comprising an elastomer band and a retainer, namely, claims 12-20 in Paper No. 5 is acknowledged.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12, 13, 16, 17, 21, 22, 25, 26, 28, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell *et al.* (U.S. Patent No. 4,991,265). Campbell discloses a cord tie device as claimed, wherein said device comprises a continuous elastomeric band (22) having a width (i.e., the width dimension of area (24)) substantially greater than its thickness, a substantially cylindrical retainer (26) having an elongated body defining a 'T-shaped' notch for receiving widthwise a portion of said elastomeric band, a band receiving portion of said notch (36), first (A) and second (B) tabs extending axially over said band receiving portion of said notch and defining a mouth portion (near 36') of said notch, wherein said mouth portion has a width less than the width (i.e., the width of area (24)) of said elastomeric band, See Figures 2-6

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and column 4, lines 3-18. As it concerns claim 29, Campbell's notch is located substantially medially of said elongate body, see Figs. 4 and 6. In regards to claim 30, Campbell's wrap comprises an elastomeric band (22) adapted to be folded over to form a first end and a second end, an elongate retainer (26) having a body defining a notch for receiving widthwise said first end of said elastomeric band, a slot in said retainer located inward thereof, and a mouth portion communicating with said slot and opening externally of the retainer, said mouth portion having a width less than the width of the elastomeric band, wherein said first end with said retainer is receivable in said second end and held by said retainer to prevent separation of said first end and said second end, see Fig. 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14-15, 18-20, 23, 24, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell *et al.* (U.S. Patent No. 4,991,265). Campbell discloses a wrap substantially as claimed, wherein said wrap includes a retainer having a band receiving notch as set forth in Paragraph 2 of this Office Action. However, Campbell does not include a second notch located substantially diametrically opposed said first notch. The applicant is reminded that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, it would have been

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obvious to one having ordinary skill in the art at the time the invention was made to provide Campbell with a second notch, wherein said second notch is formed by tabs similar but opposed to tabs (A, B), such that both sides of said wrap is of a differing color and said wrap may be used to communicate information depending on which side is facing outwards. In regards to claims 18 and 27, the applicant is reminded that functional "whereby" statement does not define any structure and accordingly can not serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957).

Response to Arguments

5. Applicant's arguments filed 12/30/02 have been fully considered but they are not persuasive.

6. In response to applicant's argument that Campbell fails to disclose "an elastomeric band having a width substantially greater than its thickness, the examiner asserts that Campbell's "flexible strap" (22) sufficiently meets the required limitations as set forth in the claims, namely, the flexible strap comprises both the strap segments (23) and lock disks (24). Furthermore, in response to the applicant's arguments that the recitation of claim 12 (i.e., elastomeric band) "is clearly a conventional continuous rubber band, it is noted that the features upon which applicant relies (i.e., conventional continuous rubber band) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Still furthermore, as stated above, Campbell's "elastomeric band" comprises both the strap segments (23) and lock disks (24). The examiner asserts that Campbell's central

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longitudinal slot is clearly less than the width of the flexible strap, see Fig. 6 which clearly shows (in phantom lines) lock disk (24) (i.e., a part of strap (22) being larger than said slot.

7. In response to applicant's argument that there is no suggestion to modify the Campbell reference to provide it with a second the notch, wherein the second notch is formed by tabs to but opposed tabs (A/B in Fig. 2), the examiner asserts that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide two notches and differing coloring to both sides of the strap such that information may be communicated depending on which side is facing outwards since it is well-known to use bright coloring (i.e., orange or yellow) on outdoor power extension cords to provide increased visibility and environmentally similar coloring (i.e., green) coloring to garden houses to reduce visibility. Thus, providing two notches and differing colorations to the strap will afford the user of Campbell's strap and retainer combination greater flexibility.

8. In response to applicant's argument that new and unexpected operational results are realized from the use of two notches, the examiner respectfully notes that the applicant's arguments are more limiting than the claims themselves. Furthermore, the examiner asserts that the Campbell patent sufficiently discloses the present invention as claimed.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinesh N Melwani whose telephone number is 703-305-4546. The examiner can normally be reached on M-F, 8:30-6 except every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4115.

DNM
February 24, 2003



WILLIAM MILLER
PRIMARY